IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 2406 of 2007()

CC.274/2007 of JUDL.MAGISTRATE OF FIRST CLASS, SASTHAMCOTTA

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PETITIONER: ACCUSED

JAYALAKUMARI, W/O.BHASKARAN UNNITHAN,
AGED 46 YEARS, 'KARTHIKA', SASTHAMCOTTA P.O.,
KOLLAM.

BY ADV. SRI.K.BABU THOMAS
SMT.MARYKUTTY BABU

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. SEETHA VIJAYAN,
W/O.VIJAYASEKHARAN PILLAI,
'ARYALAYAM', SASTHAMCOTTA P.O.,
KOLLAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2406 of 2007

Dated this the 11th day of October 2007

O R D E R

The petitioner faces indictment in a private complaint filed by the second respondent. That complaint is about an incident which had taken place on 17/12/2004. The second respondent had come to this court and filed a complaint on 5/1/2005. The learned Magistrate had referred the complaint under Section 156(3) Cr.P.C to the police. An F.I.R was accordingly registered on 3/4/2005. After the investigation, a refer report dated 5/4/2005 was filed. Notice was ordered in such refer report to the second respondent on 14/9/2005. Aggrieved by the refer report, the de facto complainant came to court with a protest complaint and the same was filed on 5/1/2006. The learned Magistrate has subsequently taken cognizance. The refer report was accepted on 18/1/2006. The matter stands posted for appearance to 30/11/2007.

2. At this stage, the petitioner has rushed to this court with this petition under Section 482 Cr.P.C. The crux of the grievance of the petitioner is that the allegation raised are under

Sections 323 and 447 I.P.C. Having due reference to law of limitation, the cognizance must have been taken of the offences alleged within one year of the date of occurrence, that is on or before 17/12/2005. The present complaint was filed only on 5/1/2006. Therefore the petition is barred by limitation. It is prayed that the proceedings may be quashed.

3. Report of the learned Magistrate was called for and it is in the report received that the facts narrated above have been made clear. The second respondent had lodged the complaint before the learned Magistrate on 5/1/2005 about the incident which occurred on 17/12/2004. That complaint must be reckoned as absolutely within the period of limitation. It was the learned Magistrate who decided to refer the complaint to the police under Section 156(3) Cr.P.C obtained a refer report against which the protest complaint was filed on 5/1/2006. The complainant had lodged the complaint on 5/1/2005. When she got the refer report, she has filed a protest complaint on 5/1/2006. If the complaint is reckoned as one filed only on 5/1/2006, the bar of limitation does apply. But the complainant obviously wants to treat her complaint as one lodged on

5/1/2005. Later protest complaint on 5/1/2006 can only be reckoned as a prayer to revive the complaint lodged initially on 5/1/2005. After the present complaint was filed on 5/1/2006, the learned Magistrate appears to have accepted the refer report on 18/1/2006; but that cannot certainly alter the position. If during the pendency of the complaint dated 5/1/2006 which is filed to revive the complaint filed on 5/1/2005, the learned Magistrate passes an order on the refer report on 15/1/2006, that cannot certainly alter the character of the initial complaint dated 5/1/2005 or the later protest complaint on 5/1/2006 to revive the complaint dated 5/1/2005. The relevant date, it is now trite the date of the complaint and not the date of the order issuing process. In this view of the matter, I am of the opinion that there is no bar of limitation.

4. This Criminal Miscellaneous Case in these circumstances must fail. This Criminal Miscellaneous Case is accordingly dismissed.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007